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RAMBUS INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

RAMBUS INC.

Plaintiff,

V.

NVIDIA CORPORATION.

Defendant.

Case No. C-08-03343 SI

**RAMBUS INC.'S OPPOSITION TO
NVIDIA CORPORATION'S
MOTION TO DISMISS AND TO
STRIKE, OR IN THE
ALTERNATIVE, FOR MORE
DEFINITE STATEMENT**

Date: November 14, 2008
Time: 9:00 a.m.
Judge: The Hon. Susan Illston

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1 **I. INTRODUCTION**

2 NVIDIA Corporation's ("NVIDIA") motion to dismiss and strike, or alternatively for a
3 more definite statement (NVIDIA's "Motion" (Dkt. No. 34)) regarding portions of Rambus
4 Inc.'s ("Rambus") First Amended Complaint ("FAC") is a transparent attempt to delay this
5 proceeding. NVIDIA concedes that Rambus has adequately pleaded claims that NVIDIA
6 directly infringed Rambus's patents, but contends that Rambus's allegations of willful and
7 indirect infringement are deficient. Contrary to NVIDIA's contention, however, simple notice
8 pleading remains the standard under *Bell Atlantic* – a case that expressly "do[es] not require
9 heightened fact pleading" – and Rambus's complaint not only meets but exceeds this
10 requirement. *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007). NVIDIA's delay
11 tactic should be rejected and its motion denied.

12 NVIDIA relies on inapposite authorities and conflates the notice-based pleading standard
13 with evidentiary standards for proving a claim on the merits. Rambus's complaint contains
14 numerous details of NVIDIA's infringement of each of Rambus's patents-in-suit, including the
15 acts by which NVIDIA has infringed each asserted patent, the specific types of memory
16 controllers and product lines accused of infringing the patents-in-suit, the willful and deliberate
17 nature of the infringement, NVIDIA's contributing to and inducement of infringement by others,
18 and infringing acts by NVIDIA's customers and other entities. These allegations provide
19 NVIDIA with sufficient information to answer the complaint. Nothing more is required. Indeed,
20 NVIDIA has had no problem answering a patent infringement complaint in a different case that
21 contained similar detail to Rambus's complaint here.

22 Yet NVIDIA now seeks to have Rambus plead additional, unnecessary details that
23 NVIDIA undoubtedly already knows, or has admitted it knew even before Rambus filed its
24 complaint, including NVIDIA's own awareness of the patents-in-suit, its knowledge of
25 infringement, and the absence of substantial non-infringing uses for its infringing products.
26 NVIDIA's motion amounts to a premature request for the sorts of details that are the proper
27
28

1 subjects of discovery. NVIDIA's motion should be viewed with the general disfavor typical of
 2 such motions, and its motion should be denied.

3 II. BACKGROUND

4 Rambus filed both its Complaint and FAC against NVIDIA on July 10, 2008.¹ (See Dkt.
 5 Nos. 1 and 4). The very next day, NVIDIA filed a complaint against Rambus in a separate
 6 action in North Carolina, alleging antitrust violations and unfair competition in an attempt to
 7 preclude enforcement of the patents Rambus has asserted in the present action. NVIDIA's
 8 allegations in North Carolina largely mirror allegations brought as counterclaims in other patent
 9 cases pending in this District. Rather than bring its allegations as counterclaims in the present
 10 action, however, NVIDIA elected to initiate a separate lawsuit in a district far removed from the
 11 Northern District of California, where NVIDIA's and Rambus's headquarters, numerous
 12 potential witnesses and the vast majority of potentially relevant documents are located – and,
 13 tellingly, where Rambus has prevailed on similar claims asserted by other alleged infringers.
 14 Rambus's motion to dismiss the North Carolina action and motion to transfer that action to this
 15 District are currently pending.

16 On August 29, 2008, NVIDIA filed the instant motion in lieu of answering Rambus's
 17 complaint, contending that Rambus should have alleged in its complaint additional details of
 18 NVIDIA's willful, contributory and inducement of infringement. NVIDIA did not, however,
 19 contest the sufficiency of Rambus's direct infringement allegations.

20 Rambus's FAC provides numerous details of NVIDIA's infringement of each of
 21 Rambus's patents-in-suit, including the acts by which NVIDIA has infringed each asserted
 22 patent, the specific types of memory controllers accused of infringing the patents-in-suit, and
 23 NVIDIA's contributing to and inducement of infringement by others. Count I for infringement
 24 of the '997 patent-in-suit includes exemplary allegations:

25 Upon information and belief, Defendant (1) has infringed and
 26 continues to infringe the '997 Patent, literally and/or under the
 27 doctrine of equivalents, by making, using, offering to sell, selling,
 and/or importing, directly and/or through intermediaries, Accused

28 ¹ Rambus's FAC added the patents-in-suit as exhibits to correct a filing error.

1 Products consisting of or including at least SDR, DDR, DDR2,
 2 DDR3, GDDR and/or GDDR3 memory controllers, in this district
 3 and elsewhere in the United States, and/or (2) has contributed and
 4 continues to contribute to the literal infringement and/or
 5 infringement under the doctrine of equivalents of the '997 Patent,
 6 and/or has actively induced and continues to actively induce others
 7 to infringe the '997 Patent, literally and/or under the doctrine of
 8 equivalents, in this district and elsewhere in the United States.

9
 10 (FAC, ¶34).

11 Even without the benefit of discovery, Rambus has identified specific product lines it
 12 alleges infringe the patents-in-suit: "Accused Products include chipsets, graphics processors,
 13 media communication processors, multimedia applications processors and/or products that are
 14 part of NVIDIA's "GeForce," "Quadro," "nForce," "Tesla," "Tegra" and/or "GoForce" product
 15 lines." (*Id.* at ¶11).

16 Rambus's FAC further identifies infringing acts by NVIDIA and its customers and other
 17 entities, and seeks, *inter alia*, an injunction to preclude further such acts:

18 A grant of a permanent injunction pursuant to 35 U.S.C. § 283,
 19 enjoining NVIDIA and each of its agents, servants, employees,
 20 principals, officers, attorneys, successors, assignees, and all those
 21 in active concert or participation with any of them, including
 22 related individuals and entities, customers, representatives, OEMs,
dealers, and distributors, from further acts of (1) infringement, (2)
contributory infringement, and (3) active inducement to infringe
 23 with respect to the claims of the Rambus Patents.

24 (*Id.* at p. 16, lines 1-6 (emphasis added)).

25 Rambus has also alleged that NVIDIA's infringement has been willful, deliberate and in
 26 disregard of Rambus's patent rights:

27 Upon information and belief, Defendant's infringement of the
 28 Rambus Patents as set forth herein has been and is willful,
 29 deliberate and in disregard of Rambus' patent rights, and Rambus
 30 is therefore entitled to increased damages up to three times the
 31 amount of actual damages and attorneys' fees, pursuant to 35
 32 U.S.C. §§ 284 and 285.

33 (*Id.* at ¶31).

1 **III. ANALYSIS**

2 **A. Dismissal is Disfavored and Rarely Granted**

3 “It is axiomatic that the motion to dismiss for failure to state a claim is viewed with
 4 disfavor and is rarely granted.” *Hall v. City of Santa Barbara*, 833 F.2d 1270, 1274 (9th Cir.
 5 1986) (internal quotation omitted). In deciding a motion to dismiss under Federal Rule 12(b)(6),
 6 the allegations in the complaint are taken as true and construed in the light most favorable to the
 7 non-moving party. *Durning v. First Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987), *cert.*
 8 *denied*, 484 U.S. 944 (1987); *see Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citing *Bell*
 9 *Atlantic*, 127 S. Ct. at 1964). Moreover, a court must “draw all reasonable inferences in favor of
 10 the nonmoving party.” *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987) (citation
 11 omitted).

12 **B. Only Simple Notice Pleading is Required**

13 The Federal Rules require a “short and plain statement of the claim showing that the
 14 pleader is entitled to relief.” FED. R. CIV. P. 8(a). The Supreme Court has concluded that “the
 15 Federal Rules eliminated the cumbersome requirement that a claimant ‘set out *in detail* the facts
 16 upon which he bases his claim....’” *Bell Atlantic*, 127 S. Ct. at 1965 n. 3 (quoting *Conley v.*
 17 *Gibson*, 355 U.S. 41, 47 (1957)). The Supreme Court made it clear that it was “not requir[ing]
 18 heightened fact pleading of specifics, but only enough facts to state a claim to relief that is
 19 plausible on its face.” *Bell Atlantic*, 127 S. Ct. at 1974. Two weeks after its *Bell Atlantic*
 20 opinion, the Supreme Court reaffirmed that under Rule 8 “[s]pecific facts are not necessary; the
 21 statement need only ‘give the defendant fair notice of what the ... claim is and the grounds upon
 22 which it rests.’” *Erickson*, 127 S. Ct. at 2200 (quoting *Bell Atlantic*, 127 S. Ct. at 1964). The
 23 “simplified notice pleading standard relies on liberal discovery rules and summary judgment
 24 motions to define disputed facts and issues and to dispose of unmeritorious claims.”
 25 *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) (quoting *Conley*, 355 U.S. at 47).

26 Accordingly, “a patentee need only plead facts sufficient to place the alleged infringer on
 27 notice as to what he must defend.” *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1357 (Fed.
 28 Cir. 2007) (citing *Bell Atlantic*, 127 S. Ct. at 1971 n. 10). Any patent-infringement complaint

1 that “contains enough detail to allow the defendants to answer . . . thus meets the notice pleading
 2 required to survive a Rule 12(b)(6) motion. . . .Nothing more is required.” *Id.*

3 **C. Rambus Has Adequately Pledged that NVIDIA’s Infringement Has Been
 4 Willful**

5 NVIDIA argues that Rambus’s claim of willful infringement is not sufficiently detailed,
 6 and suggests that Rambus should have also alleged that NVIDIA was aware of the patents-in-suit
 7 and the risk of infringing them. NVIDIA’s argument fails for several reasons.

8 **1. Rambus Has Met the Pleading Standard for Willful Infringement;
 9 There is No Requirement to Plead the Details NVIDIA Demands**

10 As *FotoMedia Techs., LLC v. AOL, LLC*, No. 2:07-cv-255, 2008 U.S. Dist. LEXIS 73077
 11 (E.D. Tex. Sept. 24, 2008), demonstrates, all that is required to plead willful infringement is an
 12 allegation that “[defendant’s] acts of infringement of the [patent-in-suit] have been willful,
 13 deliberate, and in reckless disregard of [plaintiff’s] patent rights.” *See id.* at *3 (adopting
 14 Magistrate’s denial of motion to dismiss or for more definite statement); Ex. A² (Aug. 29, 2008
 15 Mag. Rpt. & Recomm.), 3-4; Ex. B (Complaint), ¶¶22, 26, 30. In *FotoMedia*, defendants—like
 16 NVIDIA—argued that such allegations were insufficient to meet the pleading requirements and
 17 moved to dismiss under Rule 12(b)(6). The court rejected their argument and found those
 18 allegations sufficient to withstand the motion to dismiss. *See* Ex. A, 3-4. The same result should
 19 obtain here, because Rambus has adequately alleged that NVIDIA’s infringement of the patents-
 20 in-suit “has been and is willful, deliberate and in disregard of Rambus’ patent rights.” (*See* FAC,
 21 ¶31).³ No additional details are required to plead willful infringement.

22

 ² Exhibits referred to herein are attached to the Declaration of Trent E. Campione filed herewith.

23

 ³ NVIDIA has already demonstrated that it understands the basis of Rambus’s willful
 24 infringement allegations sufficiently to enable it to answer. In its complaint in North Carolina,
 25 NVIDIA acknowledges that it was previously aware of Rambus’s patents and its risk of
 26 infringing them – the very facts it now suggests Rambus should be required to notify NVIDIA of
 27 in its complaint. There, NVIDIA alleged that “[b]efore filing its patent infringement action
 28 against NVIDIA, Rambus . . . demanded that NVIDIA either (a) take a worldwide license to all of
 Rambus’s patents . . . or (b) . . . license Rambus’s . . . RDRAM interface technology. . . .NVIDIA
 lacked options for alternative technologies. Accordingly, NVIDIA refused to capitulate.” Ex. D
 (NVIDIA’s FAC), ¶106; *see Mir v. Little Co. of Mary Hospital*, 844 F.2d 646, 649 (9th Cir.
 1988) (“In addition to the complaint, it is proper for the district court to ‘take judicial notice of
 matters of public record outside the pleadings’ and consider them for purposes of the motion to
 dismiss.”); FED. R. EVID. 201(c), (d). The negotiations to which NVIDIA’s allegations refer
 address precisely the same risk of infringement NVIDIA now contends Rambus should have

1 Contrary to NVIDIA's argument, there is no requirement to recite underlying facts to
 2 allege willful infringement. *See FotoMedia Techs.*, 2008 U.S. Dist. LEXIS 73077, *3; Ex. A, 3-
 3 4 (rejecting motion to dismiss willfulness claim where the complaint alleges willful
 4 infringement, but "does not detail how the defendants are alleged to have willfully infringed...");
 5 *see also, e.g., Nw. Pipe Co. v. The Travelers Indem. Co. of Connecticut*, No. C-02-04189JF,
 6 2003 U.S. Dist. LEXIS 26416, at *7-*8 (N.D. Cal. Feb. 12, 2003) ("Plaintiff need not plead
 7 evidentiary facts to support his contention that Defendant had the requisite mental state to
 8 impose punitive damages...."); *Clark v. Allstate Ins. Co.*, 106 F. Supp. 2d 1016, 1019 (S.D. Cal.
 9 2000) ("In federal court, a plaintiff may include a 'short and plain' prayer for punitive damages
 10 that relies entirely on unsupported and conclusory averments of malice or fraudulent intent.").

11 **2. Legal Authorities on Which NVIDIA Relies are Inapposite**

12 NVIDIA cites *Nichia Corp. v. Seoul Semiconductor, Ltd.*, 2006 U.S. Dist. LEXIS 29959
 13 (N.D. Cal. May 9, 2006), for the proposition that a claim for willful infringement should be
 14 dismissed unless a complaint includes an allegation that a defendant had knowledge of the
 15 patents-in-suit. *Nichia*, however, did not involve a motion to dismiss willfulness allegations.
 16 The court there merely struck a prayer for enhanced damages, where there were *no* allegations of
 17 willful infringement, conclusory or otherwise, that could support such damages. *See Nichia*,
 18 2006 U.S. Dist. LEXIS 29959, *5 - *8; Ex. C (Nichia's Complaint), ¶27. Here, NVIDIA
 19 concedes that Rambus *has* at least alleged that NVIDIA willfully infringed the patents-in-suit.
 20 Accordingly, *Nichia* provides no support for NVIDIA's argument.

21 The case NVIDIA cites regarding *proof* of willful infringement – *In re Seagate*, 497 F.3d
 22 1360 (Fed. Cir. 2007) – also is unavailing, because it does not address the *pleading* requirements
 23 at issue here.

24
 25 alleged in its complaint. NVIDIA has long been on notice of the facts it now suggests it needs to
 26 answer Rambus's complaint, and already has sufficient information to enable it "to answer....
 27 Nothing more is required." *McZeal*, 501 F.3d at 1357; *see Phonometrics, Inc. v. Hospitality*
Franchise Sys., Inc., 203 F.3d 790, 794 (Fed. Cir. 2000) ("[A] patentee need only plead facts
 28 sufficient to place the alleged infringer on notice. This requirement ensures that the accused
 infringer has sufficient knowledge of the facts alleged to enable it to answer the complaint and
 defend itself.").

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1 **D. Rambus Has Adequately Pleaded that NVIDIA Induced Infringement of**
 2 **Rambus's Patents**

3 Rambus has also adequately pleaded its claim that NVIDIA induced infringement of the
 4 patents-in-suit. NVIDIA complains that Rambus failed to allege "that any third party has
 5 engaged in direct infringement, or any facts that would support such an assertion." (Motion at
 6 6). NVIDIA also appears to suggest, without directly arguing, that Rambus's complaint should
 7 have included allegations regarding identities of third-party direct infringers, the manner in
 8 which NVIDIA encouraged their infringement and NVIDIA's awareness of the patents-in-suit.
 9 As with the willfulness claims, NVIDIA's argument fails here for several reasons.

10 **1. Rambus Has Met the Pleading Standard for Inducement of**
 11 **Infringement; Rambus Need Not Plead the Details NVIDIA Demands**

12 Claims for induced infringement are sufficient even absent the types of allegations
 13 NVIDIA suggests Rambus should have pleaded. A complaint adequately sets forth a claim for
 14 inducement of infringement – as well as contributory infringement – if it specifies that "each of
 15 the defendants has infringed the patent in suit either directly or through acts of contributory
 16 infringement or inducement." *Jackson v. Illinois Bell Tel. Co.*, No. 01-C-8001, 2002 U.S. Dist.
 17 LEXIS 13186, at *7-*9 (N.D. Ill. July 8, 2002) (denying motion to dismiss).

18 In *Agilent Techs., Inc. v. Micromuse, Inc.*, 2004 U.S. Dist. LEXIS 20723, *5-6 (S.D.N.Y.
 19 2004) – a case NVIDIA cites to support its request for a more definite statement – the complaint
 20 stated that "[plaintiff] is informed and believes that [defendant] has directly infringed and
 21 continues to infringe, has induced and continues to induce, and/or has committed and continues
 22 to commit acts of contributory infringement of, one or more claims of the [patent-in-suit]." The
 23 defendant there – like NVIDIA – argued that the complaint should be dismissed because it failed
 24 to specify, among other things, third party direct infringers. *Id.* at *10-11. The court rejected
 25 that argument, concluding that "[t]he absence of allegations such as those described does not
 26 demonstrate that the harsh sanction of dismissal is appropriate here...." *Id.* at *11. The court
 27 likewise rejected the defendant's request for a more definite statement as to third party direct
 28 infringers. *Id.* at *16.

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1 Similarly, in *Windy City Innovations, LLC v. Am. Online, Inc.*, 227 F.R.D. 278 (N.D. Ill.
 2 2005), the complaint alleged that the defendant “is responsible for certain infringement ‘directly,
 3 contributorily, by inducement, or otherwise....’” *Id.* at 282. The defendant argued that such
 4 language is insufficient, and moved to dismiss the infringement claim under Rule 12(b)(6). *Id.*
 5 The court disagreed, concluding that the quoted language is sufficient “to satisfy the notice
 6 pleading standard” and that it “merely indicates that after discovery [plaintiff] will be able to
 7 state with more certainty the degree of involvement of [defendant] in the alleged infringement.”
 8 *Id.* at 282-83.

9 The court in *CBT Flint Partners v. Goodmail Systems, Inc.*, 529 F.Supp.2d 1376, 1379
 10 (N.D. Ga. 2007), confirmed that allegations no more detailed than those in Rambus’s complaint
 11 remain sufficient in light of the Supreme Court’s *Bell Atlantic* decision. The court observed that
 12 *Bell Atlantic* did not “change the fundamental command of Rule 8 as to what a valid complaint
 13 must look like. Indeed, the court made clear that it was not imposing a heightened pleading
 14 standard.” *Id.* (citing *Bell Atlantic*, 127 S. Ct. at 1974). It found the following allegations
 15 adequate to state claims of inducement of and contributory infringement under *Bell Atlantic*, and
 16 denied the defendant’s motion to dismiss:

17 On information and belief, [defendant] has infringed and continues
 18 to infringe, has actively and knowingly induced and continues to
 19 actively and knowingly induce infringement of, and/or has
 20 contributed to and continues to contribute to acts of infringement
 21 of one or more claims of the [patent-in-suit], all in violation of 35
 22 U.S.C. §§ 271(a), (b), and (c).

23 *Id.* at 1378.

24 Rambus’s infringement allegations exceed the required minimum because they are more
 25 detailed than allegations of contributory and inducement of infringement that have been found
 26 sufficient in pre- and post-*Bell Atlantic* cases alike. Rambus’s complaint matches the level of
 27 detail pleaded in the cases discussed above, and includes additional allegations regarding direct
 28 infringement by others:

29 Defendant ... has contributed and continues to contribute to the literal infringement and/or infringement under the doctrine of equivalents of the ’997 Patent, and/or has actively induced and

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1 continues to actively induce others to infringe the [patents-in-suit],
 2 literally and/or under the doctrine of equivalents, in this district
 3 and elsewhere in the United States.

4 (E.g., FAC, ¶34 (emphasis added)). Rambus's FAC further indicates direct infringement by
 5 NVIDIA's customers and other third parties, which is seeks to enjoin:

6 A grant of a permanent injunction pursuant to 35 U.S.C. § 283,
 7 enjoining NVIDIA and each of its agents, servants, employees,
 8 principals, officers, attorneys, successors, assignees, and all those
 9 in active concert or participation with any of them, including
 10 related individuals and entities, customers, representatives, OEMs,
 11 dealers, and distributors, from further acts of (1) infringement, (2)
 12 contributory infringement, and (3) active inducement to infringe
 13 with respect to the claims of the Rambus Patents

14 (*Id.* at p. 16, lines 1-6 (emphasis added)).⁴

15 Rambus's complaint therefore easily meets, and indeed exceeds, Rule 8(a)'s requirements
 16 for pleading inducement of infringement. No additional details are required.

17 **2. The Legal Authorities on Which NVIDIA Relies are Inapposite**

18 NVIDIA offers *Goss Intern. Americas, Inc. v. MAN Roland, Inc.*, 2008 U.S. Dist. LEXIS
 19 63311 (D.N.H. Aug. 15, 2008), a case marked "NOT FOR PUBLICATION," in support of its
 20 position, contending that "Rambus's allegation [sic] are substantially identical to those in *Goss*,
 21 and are equally insufficient to state a claim." (Motion at 6). The language deemed insufficient
 22
 23

24 ⁴ Moreover, Rambus has pleaded sufficient allegations to put NVIDIA on notice of the basis of
 25 its claim for inducement of infringement, and to enable it to answer. As discussed above,
 26 NVIDIA has long been aware of the patents-in-suit and the manner in which they are alleged to
 27 be infringed, as evidenced by its admissions in its North Carolina complaint regarding licensing
 28 discussions with Rambus that focused on precisely those issues. By identifying the accused
 29 products, describing the means of infringement, and identifying third-party infringers, Rambus
 30 has given NVIDIA sufficient notice of its claims of indirect infringement.

31 Indeed, NVIDIA, represented by the same counsel, previously was able to answer a complaint
 32 against it by denying allegations similar to Rambus's, without seeking the sort of details it now
 33 suggests it needs before it can answer Rambus's complaint. *See Ex. E* (9/15/2006 Complaint,
 34 *Scanner Technologies, Corp. v. NVIDIA Corporation*, No. 9:06-cv-00205-RC-KFG (E.D. Tex.)),
 35 ¶15 ("Upon information and belief, NVIDIA has and will continue to infringe and induce others
 36 including its customers to infringe the '678 Patent unless enjoined by the Court."), p. 6, ¶B
 37 (seeking "a judicial determination ... that NVIDIA directly, contributorily and through
 38 inducement infringes the [patents-in-suit]"); *Ex. F* (NVIDIA's 11/6/2006 Answer). Rambus thus
 39 has provided NVIDIA sufficient notice to answer the allegation of inducement of infringement.
 40 "Nothing more is required." *McZeal*, 501 F.3d at 1357; *see Phonometrics*, 203 F.3d at 794.

1 in *Goss*, however, failed to include *any* allegation of indirect, inducement or contributory
 2 infringement;⁵ the allegations there were limited on their face to direct infringement:

3 Despite knowing of the [patents-in-suit], Defendants have been
 4 and still are willfully infringing the [patents-in-suit] by making,
 5 using, offering to sell, and selling within the United States, and by
 6 importing into the United States, certain [accused products]
 7 embodying the patented invention, and will continue to do so
 8 unless enjoined by this Court.

9
 10 *Id.* at *4-*5. Rambus's complaint, on the other hand, *does* explicitly allege inducement of
 11 infringement, as well as direct infringement by third parties, and with greater detail than is
 12 required as is discussed above. (*See, e.g.*, FAC, ¶34, 16:1-6).

13
 14 Indeed, Rambus's allegations are more similar to those found to be adequate in *Fuji*
 15 *Mach. Mfg. Co. v. Hover-Davis, Inc.*, 936 F.Supp. 93 (W.D.N.Y. 1996), which the *Goss* court
 16 distinguished. NVIDIA attempts to distinguish the present case from *Fuji* on the basis that the
 17 complaint there was more detailed than Rambus's because it included allegations that products
 18 sold by the defendant had been "used by others" in an infringing manner. The *Fuji* court,
 19 however, did not require allegations to incorporate that particular language; rather, it denied the
 20 motion to dismiss because "[t]he complaint specifically alleges direct infringement by non-
 21 parties...." *Id.* at 95-96. Rambus's complaint also alleges that there was infringement by non-
 22 parties, and provides even greater detail than in *Fuji* by further identifying third parties such as
 23 "customers, ...OEMs, dealers, and distributors." (*See, e.g.*, FAC, ¶34, 16:1-6). Rambus's
 24 allegations therefore are also sufficient, even under *Fuji*, which in any event does not establish a
 25 *minimum* level of detail with which Rambus may plead indirect infringement.

26 Rambus's allegations of direct infringement by others, and identification of third parties
 27 such as "customers, ...OEMs, dealers, and distributors" also distinguish the present case from
 28 two additional cases NVIDIA relies upon – *Shearing v. Optical Radiation Corp.*, 1994 U.S. Dist.
 LEXIS 18937, 30 U.S.P.Q.2d 1878 (D.Nev. March 25, 1994) and *Ondeal Nalco Co. v. Eka*

26 ⁵ In *Goss*, the court mentioned in dicta that "Goss's proposed Second Amended Complaint is no
 27 help; neither the inducement claims nor the claims of contributory infringement adequately
 28 allege direct infringement by a non-party." 2008 U.S. Dist. LEXIS 63311, *5. The opinion,
 however, does not provide any description of any such "claims," and the proposed SAC it
 references was not found to be available.

1 *Chems., Inc.*, 2002 U.S. Dist. LEXIS 26195 (D. Del. Aug. 10, 2002). Indeed, the *Fuji* court
 2 distinguished *Shearing* for similar reasons. 936 F.Supp. at 95.

3 NVIDIA again resorts to cases describing the patentee's burdens of *proof*.⁶ (Motion at
 4 5-7). Those cases are distinguishable because they do not address the standards by which the
 5 *pleadings* must be judged.

6 **E. Rambus Has Adequately Pleaded that NVIDIA Has Contributed to**
 7 **Infringement of Rambus's Patents**

8 NVIDIA contends that Rambus's claims regarding contributory infringement are
 9 deficient "for the same basic reasons" it argued with respect to Rambus's claims for inducement
 10 of infringement. NVIDIA's arguments also fail for the same reasons discussed above in the
 11 context of inducement of infringement, including because:

- 12 • Rambus has exceeded the pleading standard for contributory infringement, and is
 13 not required to plead the details NVIDIA seeks. *See, e.g., CBT Flint*, 529 F.Supp.2d at 1378-
 14 79; *Windy City*, 227 F.R.D. at 283; *Agilent Techs.*, 2004 U.S. Dist. LEXIS 20723, *5-6, 10-
 15 11; *Jackson*, 2002 U.S. Dist. LEXIS 13186, at *7-*9.
- 16 • "[Rambus's] complaint contains enough detail to allow [NVIDIA] to answer and
 17 thus meets the notice pleading required to survive a Rule 12(b)(6) motion." *See McZeal*, 501
 18 F.3d at 1357. Indeed, in *Scanner Techs.*, NVIDIA was able to answer allegations of indirect
 19 infringement similar to Rambus's, without seeking the sort of details it now suggests are
 20 necessary for it to answer.
- 21 • NVIDIA's arguments are based on distinguishable cases, including Federal
 22 Circuit opinions describing *proof* a claim on the merits, not *pleading* standards.⁷

23 ⁶ *See DSU Med. Corp. v. JMS Co.*, 417 F.3d 1293 (Fed. Cir. 2006) (citing *Water Technologies*
 24 *Corp. v. Calco, Ltd.*, 850 F.2d 660 (Fed. Cir. 1988)); *Met-Coil Systems Corp. v. Korners*
 25 *Unlimited, Inc.*, 803 F.2d 684 (Fed.Cir. 1986); *Advanceme, Inc. v. Rapidpay, LLC*, 509
 F.Supp.2d 593 (E.D. Tex. 2007) (citing *Insituform Techs., Inc. v. Cat. Contr., Inc.* 385 F.3d 1360
 (Fed. Cir. 2004)).

26 ⁷ NVIDIA again relies on *DSU* – which describes burdens of *proof*, not *pleading* requirements –
 27 arguing here that "[t]o establish contributory infringement, the plaintiff must show that the
 28 defendant made the patented device, that the device has no substantial non-infringing uses, and
 that the defendant sold the device within the United States to a customer, whose use of the device
 constituted an act of direct infringement." (Motion, at 7). Contrary to NVIDIA's suggestion that
 Rambus should be required to plead such facts, the statute governing contributory infringement

1 **F. NVIDIA's Motion to Strike Portions of Rambus's Prayer for Relief is**
 2 **Meritless**

3 NVIDIA also asks the Court, should it grant the motion to dismiss Rambus's claim for
 4 willful infringement, to strike Rambus's prayer for treble damages and attorney fees. (*See*
 5 Motion at 5 n. 2). NVIDIA's motion to strike depends on the same arguments as its motion to
 6 dismiss allegations that NVIDIA's infringement has been willful (*see id.* at 5 n. 2, 8), and should
 7 be rejected for the same reasons. Rambus reserves the right to seek and obtain increased
 8 damages and attorney fees on any appropriate basis.

9 **G. NVIDIA's Motion for a More Definite Statement Should Be Denied**

10 NVIDIA alternatively asks the Court to order Rambus to "amend its complaint to provide
 11 a more definite statement." (Motion at 8). A motion for a more definite statement should be
 12 denied unless a pleading is "so vague or ambiguous that the party cannot reasonably prepare a
 13 response." FED. R. CIV. P. 12(e). "An underlying aim of the Federal Rules is to discourage
 14 motions to compel more definite complaints and to encourage the use of discovery procedures to
 15 apprise the parties of the basis for the claims made in the pleadings." *Home & Nature Inc. v.*
 16 *Sherman Specialty Co., Inc.*, 322 F.Supp.2d 260, 265 (E.D.N.Y. 2004) (internal quotation
 17 omitted). Therefore, "[i]f the detail sought by a motion for more definite statement is obtainable
 18 through discovery, the motion should be denied." *Beery v. Hitachi Home Elecs.*, 157 F.R.D.
 19 477, 480 (C.D. Cal. 1993). Accordingly, motions for a more definite statement are typically
 20 disfavored by the courts. *See, e.g., J&J Manuf. Inc. v. Logan*, 24 F.Supp.2d 692, 703 (E.D. Tex.
 21 1998).

22 As discussed *supra*, Rambus's complaint is sufficiently detailed that NVIDIA is fully
 23 capable of answering it, just as NVIDIA answered similar allegations in *Scanner Techs.* The few
 24 details NVIDIA argues should have been included in the complaint will be proper subjects of
 25 discovery in this matter. Moreover, the single case NVIDIA cites here – *Agilent Techs.* – weighs
 26 against NVIDIA's request because there the court *denied* a motion for a more definite statement
 27 regarding identification of a third party direct infringer. 2004 U.S. Dist. LEXIS 20723 at *16.

28 makes clear that all these factors are not even required to *prove* contributory infringement, let
 alone *plead* it. *See* 35 U.S.C. §271(c).

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Accordingly, the Court should deny NVIDIA’s motion, and allow this case to proceed without further delay.

H. In the Alternative, Rambus Should be Granted Leave to Amend

4 Should the Court conclude that Rambus’s complaint is deficient in any way, Rambus
5 respectfully requests that the Court grant leave to amend the complaint to address any issues set
6 forth in the Court’s Order. “[A] district court should grant leave to amend even if no request to
7 amend the pleading was made, unless it determines that the pleading could not possibly be cured
8 by the allegation of other facts.” *Doe v. United States (In re Doe)*, 58 F.3d 494, 497 (9th Cir.
9 1995) (internal quotation omitted). Granting leave to amend would be particularly appropriate
10 here because the allegations NVIDIA argues should be included in the complaint would be
11 entirely consistent with Rambus’s current allegations.

IV. CONCLUSION

For the foregoing reasons, NVIDIA’s motion to dismiss and to strike or, in the alternative, for a more definite statement should be denied. If, however, the Court grants NVIDIA’s motion, Rambus should be granted leave to amend its complaint.

Respectfully submitted,

DATED: October 24, 2008

MCKOOL SMITH P.C.

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